STATE OF MICHIGAN

COURT OF APPEALS

DAVID WALCOTT and SUE WALCOTT, Plaintiffs-Appellants, v KURTIS HEEMSTRA, MARIE REID, and OSWELL MATYORAUTA, Defendants-Appellees.	UNPUBLISHED June 19, 2014 No. 315274 Kent Circuit Court LC No. 11-011850-NI

Before: RONAYNE KRAUSE, P.J., and HOEKSTRA and WHITBECK, JJ.

PER CURIAM.

In this negligence action involving a traffic accident, plaintiffs appeal as of right the order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). Because reasonable minds could not conclude that defendants' alleged negligence was the proximate cause of plaintiff Sue Walcott's[1] injuries, we affirm the trial court's grant of summary disposition.

On the morning of April 16, 2010, Shirley Hamming was driving eastbound on M-6 when the vehicles in front of her began to slow, prompting her to brake. Not realizing that the cars had stopped completely, Hamming struck the vehicle in front of her while traveling approximately five miles per hour. Meanwhile, Walcott was also travelling eastbound, without any vehicles immediately in front of her. According to Walcott's deposition testimony, when she came within six or seven car lengths of the vehicle in front of her, she noticed brake lights and the car in front her—Hamming's car—suddenly stopped, or at least unexpectedly slowed to a roll. Though Walcott attempted to brake, she struck Hamming's car.

Unbeknownst to Walcott or Hamming, defendants Kurtis Heemstra and Oswell Matyorauta had, at an unknown length of time before Walcott's accident, been involved in an incident while heading westbound on M-6. Heemstra cut in front of Matyorauta, causing Matyorauta to cross the center median and collide with vehicles in the eastbound lane. Neither

[1] Collectively, Sue and David Walcott will be referred to as "plaintiffs," while individually Sue Walcott will be referred to as "Walcott."

Walcott nor Hamming witnessed this accident; nor could they see an accident scene on the road ahead of them at the time of their own collision.

In December of 2011, Walcott filed suit against Heemstra, Matyorauta, and defendant Marie Reid (the owner of the vehicle driven by Matyorauta), alleging that Heemstra's and Matyorauta's negligence caused Walcott's accident and her resulting injuries. Walcott's husband, plaintiff David Walcott, claimed a loss of consortium. Following a hearing, the trial court granted summary disposition to defendants pursuant to MCR 2.116(C)(10), concluding that plaintiffs had failed to establish Heemstra's and Matyorauta's purported negligence in the first accident was the proximate cause of the second accident. Plaintiffs now appeal to this Court.

On appeal, plaintiffs challenge the trial court's determination that Heemstra's and Matyorauta's alleged negligence could not have been the proximate cause of Walcott's injuries. In particular, plaintiffs maintain that the evidence could lead to the conclusion that Walcott's injuries resulted from a chain of events that began with Heemstra's and Matyorauta's negligence in the first accident and continued without significant interruption until Walcott's accident with Hamming. We disagree.

We review a grant of summary disposition de novo. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). A motion under MCR 2.116(C)(10) tests the factual support for a claim, *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004), and should be granted as a matter of law when "there is no genuine issue as to any material fact." MCR 2.116(C)(10). We view the pleadings, affidavits, depositions, admissions and other evidence submitted by the parties in a light most favorable to the nonmoving party. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). If the burden of proof at trial rests on a nonmoving party, in responding to a motion for summary disposition under MCR 2.116(C)(10), the nonmoving party may not rest on the allegations in the pleadings, but must "set forth specific facts showing that a genuine issue of material fact exists." *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). A material question of fact remains when, after viewing the evidence in a light most favorable to the nonmoving party, reasonable minds could differ on the issue. *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008).

To sustain a claim of negligence, a plaintiff must provide proof of: (1) duty, (2) breach, (3) proximate causation, and (4) damages. *Romain v Frankenmuth Mut Ins Co*, 483 Mich 18, 21; 762 NW2d 911 (2009). In this case, it is plaintiffs' failure to establish a material question of fact regarding proximate causation which is at issue on appeal. Typically, proximate cause presents a factual issue to be decided by the trier of fact. *Nichols v Dobler*, 253 Mich App 530, 532; 655 NW2d 787 (2002). "However, if reasonable minds could not differ regarding the proximate cause of the plaintiff's injury, the court should decide the issue as a matter of law." *Id.*

"Proximate cause incorporates two separate elements: (1) cause in fact and (2) legal or proximate cause." *Lockridge v Oakwood Hosp*, 285 Mich App 678, 684; 777 NW2d 511 (2009). The element of cause in fact refers to the requirement that the harmful result would not have come about "but for" the defendant's negligent conduct. *Genna v Jackson*, 286 Mich App 413, 417; 781 NW2d 124 (2009). In comparison, legal or proximate causation involves examination of "the foreseeability of consequences and whether a defendant should be held legally responsible for them." *Lockridge*, 285 Mich App at 684. "Proximate cause is that which

operates to produce particular consequences without the intervention of any independent, unforeseen cause, without which the injuries would not have occurred." *Helmus v Mich Dep't of Transp*, 238 Mich App 250, 256; 604 NW2d 793 (1999); see also *Unibar Maintenance Servs, Inc v Saigh*, 283 Mich App 609, 625; 769 NW2d 911 (2009) ("A proximate cause is a foreseeable, natural, and probable cause of the plaintiff's injury and damages.").

This Court has previously considered the question of proximate causation in the specific context of automobile accidents which occur in the aftermath of a separate traffic accident. For example, in *Derbeck v Ward*, 178 Mich App 38; 443 NW2d 812 (1989), the defendant collided with a telephone pole, and shortly thereafter, the plaintiff struck the defendant's disabled vehicle. This Court determined that the defendant's prior negligent acts, leading to the first accident, were not a substantial factor in the second collision, and, for this reason, the plaintiff could not establish causation in relation to allegations premised on the defendant's negligence in the first accident. *Id.* at 46. Similarly, in *Deaton v Baker*, 122 Mich App 252; 332 NW2d 457 (1982), while inspecting damage to a vehicle following an automobile accident, the plaintiff was struck by another vehicle. While recognizing the first accident as a "but for" cause of the second, this Court found a lack of proximate causation tying the first accident to the second, explaining "that there existed a hiatus in essential proof connecting the negligence . . . in the first collision, accepted as pled, and [the] plaintiff's eventual injury in the second collision." *Id.* at 258. Taken together, *Deaton* and *Derbeck* stand for the proposition that negligence in an initial automobile accident is not a proximate cause of injury sustained in a secondary, distinct automobile accident.

The question in the present case thus becomes whether Walcott's accident was a secondary, distinct accident analogous to those in *Deaton* and *Derbeck*, or part of a continuation of the first accident involving Heemstra and Matyorauta as alleged by plaintiffs. Considering the evidence, reasonable minds could not conclude that Walcott's accident was part of an uninterrupted chain of events that began with the first accident. Hamming testified that the vehicle in front of her, which she bumped, had stopped on the highway. The vehicle apparently suffered no damage as a result of the accident with Hamming, and it left the scene. There is absolutely no evidence that the vehicle struck by Hamming was involved in the first accident with Heemstra and Matyorauta, or even that it had struck the car in front of it. On the contrary, Hamming's testimony, which was uncontroverted on this point, established that the vehicle in front of her had stopped successfully. Given this fact, Walcott's accident was indisputably not part of chain reaction or pile-up leading back to the first accident. The fact that the vehicle in front of Hamming successfully stopped thus establishes an undeniable break in the chain of events. Consequently, even viewing the evidence in a light most favorable to plaintiffs, Walcott's own failure to stop in response to the traffic conditions—namely, her failure to stop in response to Hamming's accident—cannot be attributed to negligence in the first accident involving Heemstra and Matyorauta. Given the lack of evidence connecting any alleged negligence in the first accident to Walcott's injuries, no material question of fact remained regarding proximate causation and the trial court did not err in granting summary disposition to defendants under MCR 2.116(C)(10).

Affirmed.

/s/ Amy Ronayne Krause
/s/ Joel P. Hoekstra
/s/ William C. Whitbeck